

FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

The Committee solicits comment on the following proposals by March 15, 2012. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

The Committee is considering the adoption of new and amended instructions for use in cases involving allegations of violations of the Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.

[AMENDED] M Civ JI 106.01 EMPLOYMENT DISCRIMINATION STATUTE—EXPLANATION

We have a state law known as the Persons with Disabilities Civil Rights Act, which provides that an employer shall:

(1)(a) not discriminate against a person regarding employment, compensation, or a term, condition, or privilege of employment because of [a disability / genetic information] that is unrelated to the individual's ability to perform the duties of a particular job or position;

(b) not discriminate against a person on the basis of physical or mental examinations that are not directly related to the requirements of the specific job;

(c) not discriminate against a person when adaptive devices or aids may be utilized that enable the individual to perform the specific requirements of the job;

(d) not require an individual to submit to a genetic test or to provide genetic information as a condition of employment or promotion;

(e) accommodate a person with a disability unless the employer demonstrates that the accommodation would impose an undue hardship.

(2) The Persons with Disabilities Civil Rights Act also provides that a person shall not retaliate or discriminate against a person because the person has opposed a violation of the act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the act.

Note on Use

The use of any particular subsection will be dictated by the facts of the case.

Comment

MCL 37.1202; MCL 37.1602.

History

Added September 2005.

[NEW] M Civ JI 106.07E

EMPLOYMENT DISCRIMINATION—BURDEN OF PROOF—RETALIATION

Plaintiff has the burden of proving the following elements:

- (a) that [he / she] [opposed a violation of the Persons with Disabilities Civil Rights Act / made a charge, filed a complaint, or testified, assisted, or participated in an investigation, proceeding or hearing, under the Act];
- (b) that was known by the defendant;
- (c) that defendant took an employment action adverse to the plaintiff; and
- (d) that there was a causal connection between the protected activity and the adverse employment action.

To establish a causal connection, plaintiff must demonstrate that [his / her] participation in the protected activity was a significant factor in the defendant's adverse employment action.

Comment

MCL 37.1602. *Bachman v Swan Harbour Associates*, 252 Mich App 400, 434 (2002), *Aho v Dept of Corrections*, 263 Mich App 281(2004).

[AMENDED] M Civ JI 106.21

PUBLIC ACCOMMODATION STATUTE—EXPLANATION—ACCOMMODATION

(1) We have a state law known as the Persons with Disabilities Civil Rights Act, which provides that a person shall accommodate a person with a disability for purposes of [public accommodation / public service / education / housing] unless the person demonstrates that the accommodation would impose an undue hardship.

(2) The Persons with Disabilities Civil Rights Act also provides that a person shall not retaliate or discriminate against a person because the person has opposed a violation of the act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the act.

Comment

MCL 37.1102(2); MCL 37.1602.

History

Added September 2005.

[NEW] M Civ JI 106.29A

PUBLIC ACCOMMODATION—BURDEN OF PROOF—RETALIATION

Plaintiff has the burden of proving the following elements:

- (a) that [he / she] [opposed a violation of the Persons with Disabilities Civil Rights Act / made a charge, filed a complaint, or testified, assisted, or participated in an investigation, proceeding or hearing, under the Act];
- (b) that was known by the defendant;
- (c) that defendant took an employment action adverse to the plaintiff; and
- (d) that there was a causal connection between the protected activity and the adverse employment action.

To establish a causal connection, plaintiff must demonstrate that [his / her] participation in the protected activity was a significant factor in the defendant's adverse employment action.

Comment

MCL 37.1602. *Bachman v Swan Harbour Associates*, 252 Mich App 400, 434 (2002), *Aho v Dept of Corrections*, 263 Mich App 281(2004).

[NEW] M Civ JI 106.30

EDUCATIONAL INSTITUTION STATUTE—EXPLANATION

(1) We have a state law known as the Persons with Disabilities Civil Rights Act, which provides that an educational institution shall not:

- (a) Discriminate in any manner in the full utilization of or benefit from the institution, or the services provided and rendered by the institution to an individual because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution or its services, or because of the use by an individual of adaptive devices or aids.
- (b) Exclude, expel, limit, or otherwise discriminate against an individual seeking

admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution, because of a disability that is unrelated to the individual's ability to utilize and benefit from the institution, or because of the use by an individual of adaptive devices or aids.

(c) Make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or make or keep a record, concerning the disability of an applicant for admission for reasons contrary to the provisions or purposes of this act.

(d) Print or publish or cause to be printed or published a catalog or other notice or advertisement indicating a preference, limitation, specification, or discrimination based on the disability of an applicant that is unrelated to the applicant's ability to utilize and benefit from the institution or its services, or the use of adaptive devices or aids by an applicant for admission to the educational institution.

(e) Announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members because of a disability that is unrelated to the group or member's ability to utilize and benefit from the institution or its services, or because of the use by the members of a group or an individual in the group of adaptive devices or aids.

(f) Develop a curriculum or utilize textbooks and training or learning materials which promote or foster physical or mental stereotypes.

(2) The Persons with Disabilities Civil Rights Act also provides that a person shall not retaliate or discriminate against a person because the person has opposed a violation of the act, or because the person has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the act.

Note on Use

The use of any particular subsection will be dictated by the facts of the case.

Comment

MCL 37.1402; MCL 37.1602.

History

[NEW] M Civ JI 106.36

EDUCATIONAL INSTITUTION— BURDEN OF PROOF—RETALIATION

Plaintiff has the burden of proving the following elements:

(a) that [he / she] [opposed a violation of the Persons with Disabilities Civil Rights Act / made a charge, filed a complaint, or testified, assisted, or participated in an

investigation, proceeding or hearing, under the Act];

(b) that was known by the defendant;

(c) that defendant took an employment action adverse to the plaintiff; and

(d) that there was a causal connection between the protected activity and the adverse employment action.

To establish a causal connection, plaintiff must demonstrate that [his / her] participation in the protected activity was a significant factor in the defendant's adverse employment action.

Comment

MCL 37.1602. *Bachman v Swan Harbour Associates*, 252 Mich App 400, 434 (2002), *Aho v Dept of Corrections*, 263 Mich App 281(2004).

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Alfred M. Butzbaugh

Reporter: Timothy J. Raubinger

Members: Hon. Jane M. Beckering; Mark R. Bendure; Mark T. Boonstra; Patricia J. Boyle; W. Mack Faison; Gary P. Gordon; Elizabeth Phelps Hardy; Hon. John A. Hohman, Jr.; Helen K. Joyner; Daniel J. McCarthy; David S. Mittleman; Hon. James R. Redford; Hon. Douglas B. Shapiro; Noreen L. Slank; Joseph C. Smith; Paul C. Smith; Hon. Brian R. Sullivan; Hon. Donald A. Teeple; Thomas Van Dusen; Hon. Michael D. Warren, Jr.